

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1606 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRAPRASAD VASANTLAL SHAH

Versus

NAGRIK COOPERATIVE CREDIT SOCIETY LTD. & 2

Appearance:

MR AKSHAY H MEHTA for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/12/1999

ORAL JUDGEMENT

1. On last date, i.e. on 23rd December, 1999, the counsel for the respondent No.1 - decree holder was present. Today none is present for respondent No.1.

2. In this revision application, the petitioner

original defendant- judgment debtor challenges the order of the Executing Court dated 17th July, 1995. Under this order, the jangam warrant issued for attachment of property shown in the list column of debtors against the petitioner.

3. The facts of the case are that the petitioner had taken a loan on 13th May, 1985 from the respondent NO.1 society namely, The Nagrik Cooperative Credit Society Limited for purchase of Kelvinator make of 286 litres refrigerator. The society advance a sum of Rs.6000/with 20 % margin money on the higher purchase basis. This loan had to be returned to the society by the petitioner in 24 equal installments of Rs.250/- each. The rate of interest was fixed at 18% p.a.. The respondents No.2 and 3 stood as guarantors to the applicant- petitioner. A promissory note is also stated to be executed by the petitioner in favour of the society for this amount of loan. He also complied with all the formalities accepting the terms and conditions on which the said loan was advanced to him. One of the conditions stipulated is that on failure to repay the amount, the society was at liberty to seize the said refrigerator and dispose it of by either public or private auction to recover its dues. It is also one of the conditions that the society is at liberty in case the said article did not fetch sufficient amount, to sell other property of the applicant to recover the balance amount. The petitioner despite of repeated demands made by the society has failed to pay the installments of loan as stipulated and the society was constrained to file the suit. The suit has been filed for recovery of Rs. 7468-25 with 18 % interest from 30-6-1987 together with 3% penal interest. The suit came to be decree by the board of Nominees in favour of the society on 6-10-1987. The petitioner and respondents No.2 and 3 were made jointly and severally liable for payment of the amount. Even after passing of the decree, the petitioner has not cared to pay the decretal amount to the society and accordingly the society had no option except to put this decree for execution and regular Darkhast NO. 230 of 1988 came to be filed. In Darkhast, the society also prayed that the refrigerator be attached and be sold and the outstanding amount be paid from the sale proceeds thereof. On 1-11-1988, the Executing Court issued jangam warrant in favour of the respondent society through the court bailiff. On 19-12-1988, the bailiff in presence of two panchas got attached a Television set of Dyanora make. The wife of the petitioner lodged a protest by filing an application purporting to be under Order 21, Rule 58 of C.P.C. in the Executing court on 2-1-1989 stating that T.V. belongs to her and in the execution of the decree passed against her husband, it

could not have been attached. She also stated that since the said T.V. was of her ownership it should be returned to her. It is the grievance of the petitioner that the Society has not taken any steps to sell the said TV set either by public or private auction though he repeatedly made a request to the Executing court for its disposal. It is the case of the petitioner that the wife of the petitioner has no objection if the said TV set was sold for recovery of the loan amount. Another jangam warrant was issued on 14th December, 1994 and subsequently impugned order was issued. Hence this revision application before this court.

4. Learned counsel for the petitioner contended that the society has taken the property of the wife of the petitioner worth Rs. 11,000/- and it has not sold the same and as a result thereof it has become scrap of which value is zero. In view of this fact, what he contends that Rs.11000/- be adjusted toward decreetal amount and for the balance he is ready to make the payment. Lastly it is contended that the society is responsible for this deterioration of the T.V. set which results in loss to the wife of the petitioner and when the wife was agreeable at one point of time that this T.V. set may be sold, it should have been done and the amount should have been adjusted.

5. On last date, Shri R.N. Shah, counsel for the respondent - society made a statement that the society has no objection to give back the T.V. set to the wife but today none is present.

6. Having heard the learned counsel for the petitioner and going through the contents of the civil revision application, I am satisfied that it is not a bonafide act on the part of the petitioner to delay the execution of the decree. It is unfortunate the the decree has been made in the year 1987 and more than twelve years have passed but nothing has been recovered towards it. This attachment of T.V. seems to be or appears to be an attempt on the part of the petitioner to avoid the attachment of refrigerator. It is unfortunate that jangam warrant was issued for attachment of refrigerator but the bailiff also felt satisfied to attach the T.V. So there appears to be some collusion in between the bailiff and the petitioner. It is different matter that now the petitioner is stating that the costs of T.V. is of Rs.11,000/- and bailiff also ascertained its costs to be Rs.11,000/- but if we go by the facts of this case, on which there is no dispute this T.V. was alleged to be purchased by the wife after taking loan

from some other Society on 15th November, 1984. It is difficult to accept that the value of T.V. would have been of Rs.11,000/- at that point of time but this is not the point in issue. The petitioner's wife, may be at the instance of the petitioner, raised objection against attachment of T.V. and naturally the society is perfectly legal and justified in its approach not to further touch the T.V.. for recovery of this loan amount against the petitioner. The wife admittedly has filed an application under Order 21 Rule 58 C.P.C. but very conveniently the petitioner has not disclosed what ultimately happened to that application. It is different matter that the petitioner has stated that wife has also given her consent for disposal of T.V. but I do not find anything on the record of this revision application in support thereof. Even if such an application is given when it was given it is not disclosed. It appears to be only a concoction of petitioner in collusion with his own wife and it cannot be taken to be as if some wrong has been committed by the society. It is unfortunate that the society's money which has been taken by the petitioner as loan for purchase of refrigerator has not been paid. It is obligatory on the part of the petitioner to pay the installments of the loan amount but that has not been discharged. The society file the suit and that has been decreed but thereafter he made all attempts to see that this decree may not be executed. This claim of the petitioner that cost of T.V. has to be taken Rs.11,000/and adjusted towards the decreetal amount is wholly misconceived and as such it can not be accepted. Both ways the petitioner has tried to put the society to loss. By filing objection against the attachment of T.V. by the wife the petitioner made it not permissible for the society to sell that T.V.. Now after so many years when the value of T.V. would have been zero, the petitioner has come up with all these offers and projecting as if he is very bonafide person. The decree is not executed and in the facts of this case i.e. the objection filed by wife under Order 21 Rule 58 C.P.C. the society as well as the Executing court are perfectly legal and justified not to sale the T.V. and to issue fresh jangam warrant for attachment of the movable property of the petitioner. This revision is wholly misconceived and clearly an attempt by the petitioner to delay the execution of the decree which has been passed long back in favour of the society against him.

7. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands

vacated. As nobody is present on behalf of the respondents, no order as to costs. However, the petitioner is at liberty to take this T.V. back from the Society.

zgs/-